



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT-OST-2015-0246]

RIN 2105-AE12

Nondiscrimination on the Basis of Disability in Air Travel; Establishment of a Negotiated Rulemaking Committee

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of intent to establish the Accessible Air Transportation (ACCESS) Advisory Committee; Solicitation of applications and nominations for membership.

SUMMARY: The Department of Transportation (“Department,” “DOT,” or “we”) announces its intent to establish a negotiated rulemaking (Reg–Neg) committee to negotiate and develop proposed amendments to the Department’s disability regulation on three issues: whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications; whether to require an accessible lavatory on new single-aisle aircraft over a certain size; and whether to amend the definition of “service animals” that may accompany passengers with a disability on a flight. The committee will include representatives of organizations or groups with interests that are affected significantly by the subject matter of the proposed regulation.

The Department anticipates that the interested parties may include disability advocacy organizations, airlines, airports, and aircraft manufacturers. The Department seeks comment on the establishment of the Accessible Air Transportation (ACCESS) Advisory Committee, the issues to be addressed, and the proposed list of stakeholder types to be represented on the Committee. We also

invite nominations or applications for membership on the ACCESS Advisory Committee. To the extent it can do so consistent with the goal of ensuring effective representation and necessary expertise, the Department will select individuals who reflect the diversity among the organizations or groups represented.

DATES: Comments and nominations for Committee membership must be received on or before [Insert date 14 days from the date of publication in the Federal Register.]

ADDRESSES: You may submit comments using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 202 493-2251. To avoid duplication, please use only one of these four methods. See the “Submitting Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments. In all cases, please identify your comment with docket number DOT-OST-2015-0246.

FOR FURTHER INFORMATION CONTACT: If you have questions about the regulatory negotiation, you may contact Livaughn Chapman or Blane A. Workie, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at livaughn.chapman@dot.gov or blane.workie@dot.gov or by telephone at 202-366-9342. To obtain a copy of this notice of intent in an accessible format, you may also contact Livaughn Chapman.

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket number for this notice of intent (DOT-OST-2015-0246), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, by mail, by hand delivery, or by fax. Please use only one of these methods. DOT recommends that you include your name and a mailing address, an email address, or a phone number with your comments so that DOT can contact you if there are questions regarding your submission. All comments and material received in the docket during this comment period will be given consideration and become part of the record in this rulemaking proceeding. We will consider to the extent practicable all comments and material received in the docket after the comment period ends.

Viewing Comments and Documents

You may view comments on this notice of intent, as well as any documents mentioned in this preamble as being available in the docket at <http://www.regulations.gov>. After entering the docket number, click the link to “Open Docket Folder” and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Submitting Nominations

All nomination materials should be submitted electronically via email to accesscommittee@dot.gov. Any person needing accessibility accommodations should contact Livaughn Chapman, Chief, Aviation Civil Rights Compliance Branch, Office of Aviation Enforcement and Proceedings, at (202) 366– 9342.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Background

On December 7, 2015, the Department published a notice in the Federal Register announcing its intent to consider a Reg–Neg on six issues – (1) inflight entertainment accessibility; (2) supplemental medical oxygen; (3) service animals; (4) accessible lavatories on single-aisle aircraft; (5) seating accommodations; and (6) carrier reporting of disability service requests.¹ On January 5, 2016, the Department subsequently announced an extension of the 30-day comment period to January 21, 2016.² At the close of the comment period, we had received nearly 70 comments. To date, we have received close to 90 comments. The Department also announced that we had hired a neutral convener, Mr. Richard Parker, a professor of law at the University of Connecticut School of Law, to speak with representatives from among the organizational interests mentioned above about the feasibility of conducting a Reg–Neg on these six issues. Mr. Parker conducted interviews with 46 different stakeholders representing these interests and prepared a convening report to DOT on the feasibility of conducting the negotiated rulemaking under consideration. The convening report is available in the rulemaking docket at DOT-OST-2015-0246. Based on the convening report, the comments received on the December notice, and on the statutory factors in the Negotiated Rulemaking Act (5 U.S.C. 563), DOT decided that it would be in the public interest to establish a negotiated rulemaking

¹ 80 FR 75953 (December 7, 2015).

² 81 FR 193 (January 5, 2016).

committee (5 U.S.C. 564) with a narrower scope. Chief among the statutory factors we considered in our decision was whether a Committee could be assembled that would fairly represent all affected interests, negotiate in good faith, and offer a reasonable likelihood of reaching a consensus on the issues. We determined that the following three issues were the most suitable for the Reg–Neg: (1) whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications; (2) whether to require an accessible lavatory on single-aisle new aircraft over a certain size; and (3) whether to amend the definition of “service animals” that may accompany passengers with a disability on a flight. The Department intends to address the remaining issues (supplemental medical oxygen, seating accommodations, and carrier reporting of disability service requests) through other actions.

In selecting these three issues for the Reg–Neg, the Department considered the impact of the issues on all the affected stakeholders and the likelihood of the Committee reaching agreement on recommendations to the Department. Concerns expressed across interest groups about service animals on aircraft suggested that stakeholders would be motivated to come to agreement on their recommendations. While the differences among stakeholders on IFE accessibility were greater, there were other indications that consensus recommendations may be achievable and that Committee deliberations might furnish highly relevant and useful information and insight to guide Departmental rulemaking deliberations in any event. For example, new technologies and methods for providing IFE have created more accessible onboard entertainment and communications options at lower cost than ever before. Although lavatory accessibility on single aisle aircraft is perhaps the longest standing and the most controversial of the issues considered for the Reg–Neg, we believe that there are significant advantages to including it. The Reg–Neg process will serve to educate all the parties about the state of the art in lavatory accessibility and allow stakeholders to identify regulatory options and share information on their costs and benefits. We believe these stakeholder discussions will enhance the

possibility of reaching agreement on proposals to recommend to the Department, and in furnishing useful information to guide the Department's rulemaking if consensus is not reached. For the above reasons, we believe that the scope of the rulemaking should focus on these issues.

The Department acknowledges the views and concerns of all the participants in the convening process and is committed to addressing the issues of supplemental medical oxygen, seating accommodations, and carrier reporting of disability service requests as appropriate in subsequent rulemaking or other actions.

The Secretary of Transportation has approved a charter to govern the activities of the ACCESS Advisory Committee in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C.App. 2. In accordance with section 14 of FACA, the charter provides for the ACCESS Advisory Committee to remain in existence for two years after the filing date unless sooner terminated or renewed. However, the Department intends to complete the Reg-Neg for the proposed rule in 2016 and to publish a Notice of Proposed Rulemaking (NPRM) in 2017.

This notice of intent requests nominations for members of the Committee to ensure a wide range of member candidates and a balanced committee. The Secretary of Transportation will appoint approximately 25 Committee members, including a representative of DOT, who will each serve until the stated objectives of the Committee have been accomplished (i.e., the Committee submits its recommendation to the Secretary). The Committee is expected to meet every month from May to October 2016. Members should be senior level officials who can commit their organizations and who either are experts on accessibility with respect to the topics of interest to their organizations or who have access to such experts.

The Department will choose the Committee members based on four main criteria: (1) representativeness (does the applicant represent a significant stakeholder group that will be substantially affected by the final rule); (2) expertise (does the applicant bring essential knowledge,

expertise and/or experience regarding accessibility and the topic area(s) of interest that will enrich the discussion of the available options and their respective costs and benefits); (3) balance (does the slate of selected applicants comprise a balanced array of representative and expert stakeholders); and (4) willingness to participate fully (is the applicant able and willing to attend the listed meetings and associated working group conference calls, bring in other experts from the applicant's organization as needed and relevant, bargain in good faith, and generally contribute constructively to a rigorous policy development process).

Subject to change based on information received in response to this notice of intent, DOT proposes for public comment the following list of stakeholder categories to be members of the Committee:

- U.S. Department of Transportation
- Airlines (1 representative each from 2 large U.S. airlines, 2 large foreign airlines, 1 regional U.S. air carrier, 1 low-cost US air carrier, and 1 charter carrier to be determined)
- Cross-disability advocacy groups (2 representatives to be determined)
- Consumer groups (1 representative to be determined)
- Professional associations of flight attendants (1 representative to be determined)
- Advocacy groups for blind and visually impaired individuals (2 representatives to be determined)
- Advocacy Groups representing service animal users (1 representative to be determined)
- Advocacy Groups representing people with psychiatric disabilities (1 representative to be determined)
- Providers, manufactures, or experts of IFE products, systems, and services (2 representatives to be determined)

- Advocacy groups representing deaf and hard of hearing individuals (2 representatives to be determined)
- Academic or non-profit institutions having technical expertise in accessibility research and development (2 representatives to be determined)
- Aircraft manufacturers (2 representatives to be determined)
- Advocacy groups representing individuals with mobility disabilities (2 representatives to be determined).

We believe that the aforementioned stakeholder categories represent the interests significantly affected by this rulemaking. Organizations from each stakeholder category may nominate a candidate for Committee membership from their own organization, or jointly nominate a candidate to represent their collective interests. The list is not presented as a complete or exclusive list of stakeholder categories from which Committee members will be selected. The list merely indicates the stakeholder categories that DOT tentatively has identified as representing significantly affected interests in the proposed rule to enhance requirements for accessibility in air transportation. All individuals or organizations who wish to be selected to serve on the Committee should submit an application, regardless of whether their stakeholder category appears on the above list. If anyone believes their interests would not be adequately represented by one or more of these categories, they should document that assertion in their comment and/or their application for membership on the Committee. DOT requests comments and suggestions regarding its tentative list of significantly affected stakeholder categories from which potential members of the Committee may be selected.

Individuals applying for membership should keep in mind that Committee members will be selected to represent not only the interest of that individual's own organization but rather the collective stakeholder interests of organizations in the same stakeholder category. For example, an individual from a large U.S. airline selected to serve on the Committee would represent not only its airline but all

large U.S. airlines. As such, the individual would be expected to consult with other large airlines in bringing issues to the table and making decisions on proposals before the Committee.

Working groups may be formed to address the specific ACCESS Advisory Committee issues. These working groups will include Committee members but may also include experts or representatives who are not Committee members. Such working groups will report back to the ACCESS Advisory Committee. The experience of past Reg-Negs has been that working groups play a vital role in the policy development process and deliberations. They provide both Committee Members and non-Members an important opportunity for meaningful participation and interaction in identifying and weighing options and alternatives. The Department's Office of Aviation Enforcement and Proceedings will provide appropriate funding, logistics, administrative, and technical support for the Committee and its working groups. DOT subject matter experts, attorneys, and economists will also provide support to the Committee and work groups. A website for Committee members, working group members, and the public to access online general information, meeting announcements, agendas, and minutes, as well as Committee and working group work products will be established at <https://www.transportation.gov/airconsumer/accesscommittee>.

At this time, we anticipate that the ACCESS Advisory Committee will have six two-day meetings in Washington D.C. We propose to hold the meetings on the following dates: first meeting, May 17 – 18; second meeting, June 14 – 15; third meeting, July 11 – 12; fourth meeting, August 16 - 17; fifth meeting, September 22 – 23, and the sixth and final meeting, October 13 -14. Individuals interested in serving on the Committee should plan to attend each of these meetings in person. When appropriate, designees will be permitted.

Process and Deadline for Submitting Nominations: Organizations and/or persons who believe they meet the criteria listed above are invited to apply for membership on the ACCESS Advisory Committee to represent the stakeholder interests of their organizational category with respect to the

proposed issues. Organizational applicants should indicate both the stakeholder category they propose to represent and the individual from their organization applying to serve on the Committee; describe the responsibilities and qualifications of that person; and describe the qualifications of any alternates or professional colleagues who will be assisting the principal representative in the process.

Qualified individuals can self-nominate or be nominated by any stakeholder or stakeholder organization. To be considered for the ACCESS Advisory Committee, nominators should submit the following information:

- (1) Name, title, and relevant contact information (including phone and email address) and a description of the issues addressed in this rulemaking that such individual is qualified to address, and the interests such a person shall represent;
- (2) A letter of support from a company, union, trade association, or non-profit organization on letterhead containing a brief description why the nominee is qualified and should be considered for membership to the extent the nominee proposes to represent parties with interest in this proceeding;
- (3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration;
- (4) Short biography of nominee including professional and academic credentials;
- (5) An affirmative statement that the nominee meets all Committee eligibility requirements;
- and
- (6) If applicable, the reason(s) that the parties identified in this notice of intent as affected interests and stakeholders do not adequately represent the interest of the person submitting the application or nomination.

All individuals representing a stakeholder interest who wish to serve on the Reg-Neg Committee should apply for membership by supplying the information listed above. Please do not send company,

trade association, or organization brochures or any other information. Materials submitted should total two single-spaced pages or less. Should more information be needed, DOT staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the Internet. Nominations may be emailed to *accesscommittee@dot.gov*. Nominations must be received by [insert date 14 days from the date of publication in the Federal Register.]

Nominees selected for appointment to the Committee will be notified of appointment by email. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Secretary take into account the needs of the diverse groups served by DOT, membership shall include, to the extent practicable, individuals with demonstrated ability to represent persons with disabilities, minorities, and women. The Department will file any comments it receives on this notice of intent in docket DOT-OST-2015-0246. Notice to the public will be published in the Federal Register at least 15 days prior to each plenary meeting of the ACCESS Advisory Committee and members of the public will be invited to attend.

Issued under the authority of delegation in 49 CFR 1.27.

Dated: April 4, 2016

Kathryn B. Thomson

General Counsel

[FR Doc. 2016-08062 Filed: 4/6/2016 8:45 am; Publication Date: 4/7/2016]